

1 UNITED STATES DISTRICT COURT  
2 EASTERN DISTRICT OF NEW YORK

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4 DEPARTMENT OF AMAZONAS, :  
5 Plaintiff, : CV-00-2881 (ERK)  
6 v. : September 7, 2000  
7 PHILIP MORRIS CO., :  
8 Defendants. : Brooklyn, New York  
9 -----X

10 DEPARTMENT OF ANTIOQUIA, :  
11 Plaintiff, : CV-00-3857 (ERK)  
12 v. :  
13 PHILIP MORRIS CO., :  
14 Defendants. :  
15 -----X

16 DEPARTMENT OF MAGDALENA, :  
17 Plaintiff, : CV-00-4530 (ERK)  
18 v. :  
19 PHILIP MORRIS CO., :  
20 Defendants. :  
21 -----X

22 TRANSCRIPT OF CIVIL CAUSE FOR ORAL ARGUMENT  
23 BEFORE THE HONORABLE EDWARD R. KORMAN  
24 UNITED STATES DISTRICT JUDGE  
25

1 UNITED STATES DISTRICT COURT  
2 EASTERN DISTRICT OF NEW YORK

3  
4 APPEARANCES:

5 For the Plaintiff: JOHN J. HALLORAN, JR., ESQ.  
6 KEVIN MALONE, ESQ.

7 For the Defendant: CRAIG STEWART, ESQ.  
8 IRVIN B. NATHAN, ESQ.  
9 CHRISTOPHER D. MAN, ESQ.

10 Audio Operator: WINNIE VALENTIN

11  
12  
13  
14 Court Transcriber: ELIZABETH BARRON  
15 328 President Street, #3  
16 Brooklyn, New York 11231  
17 (718) 596-3802  
18  
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transcript produced by transcription service

1 THE CLERK: Department of Amazonas versus Philip  
2 Morris, et al. and related cases.

3 Counsel, your appearances for the record.

4 MR. HALLORAN: May it please the Court. My name  
5 is John J. Halloran, Junior from the law firm of Speiser  
6 Krause, co-counsel for the plaintiffs, Department of  
7 Amazonas, et cet.

8 MR. MALONE: Good afternoon, your Honor. My name  
9 is Kevin Malone. I'm with the law firm of Krupnick,  
10 Campbell, Malone, Roselli, Buser, Slama & Hancock.

11 THE COURT: You remembered them.

12 MR. MALONE: Actually, I left off the last two.

13 THE COURT: How do they answer the phone?

14 MR. MALONE: They say Krupnick, Campbell. They  
15 never get to me. Your Honor, we're a Florida firm but we do  
16 have lawyers who are New York lawyers authorized to practice  
17 in this District. I have a petition for pro hoc vice  
18 admission which is pending. I don't really need to speak  
19 very much today unless you have questions, but I'm here  
20 primarily because I'm also the attorney for the European  
21 community and to the extent you have any questions in regard  
22 to the filing related to the European community, I'm here to  
23 answer them.

24 MR. STEWART: I'm Craig Stewart. I'm with the law  
25 firm of Arnold & Porter in our New York office. I'm with

1 two colleagues today and I'll be moving their admission pro  
2 hoc vice. They are Irvin Nathan and Chris Man from our  
3 Washington office.

4 THE COURT: We're going to have to -- I give  
5 everybody as much time as needed to argue. If we don't  
6 finish by about 3:25 (ui).

7 MR. NATHAN: That will be fine. I appreciate it.  
8 It's our motion, your Honor. I'll be happy to -- let me say  
9 that I'm delighted to be back in this courthouse and I look  
10 forward to litigating in this Court before a judge chosen in  
11 accordance with the rules, random selection from the Clerk's  
12 office.

13 Your Honor, this case, which is for import duties  
14 and taxes for cigarettes that were allegedly smuggled into  
15 Colombia, is totally unrelated to the smoking and health  
16 litigation that is pending before Judge Weinstein. What  
17 we're asking for is that the case be taken back to the  
18 Clerk's office and reassigned in accordance with the random  
19 selection rules.

20 The rules, your Honor, are very clear in this  
21 District that in order to be related, the cases have to be  
22 factually related. They have to be factually similar or  
23 arise from the same transaction or events. The rule is  
24 clear. It says similar facts and law, not similar facts or  
25 law, so the factual allegations have to be related.

1 THE COURT: I don't have my copy of the rules.

2 MR. NATHAN: I have it here.

3 THE COURT: But my recollection is that the  
4 ultimate test is whether it would result in a substantial  
5 savings of judicial resources. I mean, I don't remember the  
6 exact --

7 MR. NATHAN: That is true. Let me show you the  
8 rule, which is 53.A, which says a case is related to another  
9 for purposes of this guideline when the costs of the  
10 similarity of facts and legal issues or because the case  
11 arises from the same transactions or events, a substantial  
12 saving of judicial resources is likely to result. There is  
13 no likely savings to result --

14 THE COURT: To me, that's the issue, really. The  
15 issue is, is there a substantial savings of judicial  
16 resources (ui) likely to be in that category.

17 MR. NATHAN: Let me say that there would be no  
18 savings of judicial resources because this judge, Judge  
19 Weinstein, has no knowledge -- nothing has ever been before  
20 him about the Colombia tax scheme which is at the heart of  
21 this case or the foreign distribution of cigarettes. This  
22 has nothing to do, your Honor, with the illnesses that  
23 allegedly arise from smoking or the alleged concealment of  
24 the illnesses. There is no factual relationship whatsoever  
25 and therefore there is no likely saving of judicial

1 resources.

2           What the plaintiffs allege in their papers in  
3 justifying this is that there are legal issues that are  
4 similar to both cases. For example, they say they're both  
5 cases for money damages and they're both cases that are RICO  
6 cases and they have mail fraud and there could be privilege  
7 issues about documents. Your Honor, if that were the test  
8 -- that cannot possibly be the test because then any time --  
9 you can have a dozen RICO cases. Every judge in the Court  
10 has a RICO case. You decide who has decided issues like  
11 what's an enterprise the way you like it and you check the  
12 box that this is related.

13           Let me say, your Honor, that this is a rare case  
14 because in the very complaint that they filed, they alleged  
15 that there was no relevance whatsoever, no connection  
16 whatsoever between smoking and health cases and their case.  
17 Let me tell you the background of this, why they put it in  
18 their complaint and then how cynical it was for them to  
19 check the related box in light of that circumstance.

20           The multi-district panel has brought together all  
21 of the foreign jurisdiction cases, sovereign cases in the  
22 federal courts relating to smoking and health and assigned  
23 them to Judge Friedman in the District of Columbia. In  
24 December or January, Judge Friedman dismissed those cases  
25 and said that they were too remote and the foreign

1 jurisdictions did not have a cause of action.

2           Apparently, somebody in Latin American from Philip  
3 Morris sent a letter to a representative of an agency  
4 involving the departments in Colombia and said this case is  
5 pertinent. You ought to consider this case -- this is  
6 before they filed the suit -- because it shows how American  
7 courts are reacting to foreign jurisdictions.

8           In the complaint -- I have a copy of it. It's in  
9 their papers here. It's Exhibit A to their papers. They  
10 list that as one of the allegations of fraud. This is mail  
11 fraud to send that letter because the case by Judge Friedman  
12 about the Guatemala case on smoking and health they said is  
13 so unrelated to their matter that it was a false statement  
14 and defrauded the plaintiffs of their property because that  
15 decision has no relevance whatsoever to their smuggling  
16 case, their case for smuggling and contraband.

17           The Guatemala case for smoking and health is the  
18 same basic allegations, except for who the plaintiff is, as  
19 the tobacco litigation pending before Judge Weinstein. So  
20 on the same day they filed a complaint making this their  
21 allegation of fraud, that the statement was made, they  
22 checked the box and say this is related to Judge Weinstein's  
23 smoking and health cases.

24           Further proof of the pudding is earlier this week,  
25 just this week, the plaintiffs in that case, the tobacco

1 litigation filed, I guess at Judge Weinstein's suggestion, a  
2 proposed consolidation of all of those related cases that  
3 deal with the punitive damages in the smoking and health  
4 cases. Here's a copy of the complaint that they filed and  
5 here's a copy for you. It's on file with this Court.

6           What's interesting about this is they list all of  
7 the cases that have been related, except for the Colombian  
8 cases, because they recognize there is no relationship. In  
9 fact, they checked on the box the related cases and listed  
10 as an appendix to this document the related cases, which all  
11 relate to smoking and health and concealment, and the  
12 related cases are marked here, and the Colombian cases are  
13 not included there. They recognize -- these are the  
14 plaintiffs in the smoking and health cases -- that this case  
15 for smuggling and to collect taxes and import duties in  
16 Colombia has nothing to do with the situation in the United  
17 States for smoking and health.

18           Your Honor, we are not, as you know, attacking  
19 Judge Weinstein. He didn't do anything here. Their  
20 argument is that he didn't reject this. Judge Weinstein did  
21 exactly the right thing. He transferred it to you for  
22 consideration as to whether or not this was related. It's  
23 clear, by the way, from one public statement that Judge  
24 Weinstein has made about this case, he's not that eager to  
25 have it. He said it's ripe for a nonconvenience motion and



1 it should be back in Colombia, and he's got enough problems  
2 dealing with U.S. matters not to take on the problems of the  
3 world. That was his statement.

4 We're happy to litigate this in this District. It  
5 doesn't really have any connection to this District but they  
6 chose it here. They chose it because they wanted Judge  
7 Weinstein. They said that. It's quoted in the press in  
8 Colombia that they wanted the judge who has an iron hand  
9 against tobacco companies. They deny that they were the  
10 source of that statement. I don't know how a Colombian  
11 reporter got the notion that that's where they were going to  
12 file and in their own documents, they put in a newspaper  
13 story talking about their comments to different press on  
14 this case.

15 Mr. Malone says to you in the supplemental paper  
16 -- they say the European union is thinking about filing a  
17 suit and they think if they file a suit, they'd also like to  
18 get Judge Weinstein and you should consider that as being of  
19 relevance here. It is precisely the point, your Honor, and  
20 is the reason that we are prejudiced here by this. If this  
21 Court allows itself to be manipulated by these rules, allows  
22 plaintiffs to choose a preselected judge that's going to  
23 handle the case, we're going to have more cases filed  
24 against us than we would otherwise have and certainly more  
25 cases in this District.

1           Judge Weinstein wrote an opinion in the Escobar  
2 case in which he said it was not related -- there was a  
3 criminal case. He had a prior criminal case and then the  
4 guy had a second case. He said, this defendant, a criminal  
5 defendant is entitled to perceive that it is a fair system  
6 and that the judges are going to be selected at random.  
7 It's not going to be selected by the government, who the  
8 judge is going to be in this case. He raised it as an  
9 unrelated case and sent it back to the wheel.

10           Philip Morris is also entitled to that, your  
11 Honor, to have a judge selected at random if they want to be  
12 in this District. If this is related to a smoking and  
13 health case -- we have been trying to be as intellectually  
14 honest as we can. If it's related to smoking and health,  
15 it's a foreign case by a foreign sovereign and it belongs in  
16 the multi-district panel before Judge Friedman.

17           They have not sought to do that. It was  
18 dismissed. Judge Friedman has dismissed all those cases.  
19 We're willing to litigate this in the Eastern District, but  
20 we want a judge who is chosen at random and has no prior  
21 relationship with this defendant and has not been the  
22 recipient of all these allegations about smoking and health  
23 that has absolutely nothing to do with the alleged  
24 smuggling. So we ask the Court to take a look at it, find  
25 that it is not related, and let me bring to your attention

1 one more matter that came up within the last few weeks.

2 This is a decision in the District of Columbia  
3 involving Linda Tripp. The matter was brought before Judge  
4 Lambert, who said, yes, this is a related case. The  
5 calendar -- in the District of Columbia, where I am, the  
6 selection of judges has become a hot political issue in  
7 these matters and as a result, there was a calendar  
8 committee and it was made up of Judges Kessler, who is the  
9 chair, Judge Sullivan and Judge Friedman.

10 They issued an order on August 14th finding that  
11 this was unrelated to matters pending before Judge Friedman.  
12 If I can just read you one sentence from that or two  
13 sentences from that decision. They say, "The fundamental  
14 rationale for the general rule requiring random assignment  
15 of cases is to ensure greater public confidence in the  
16 integrity of the judicial process. The rule guarantees fair  
17 and equal distribution of cases to all judges, avoids public  
18 perception or appearance of favoritism in assignments and  
19 reduced opportunity for judge shopping."

20 And that's exactly what we have here. We have a  
21 plaintiff or a group of plaintiffs that has decided before  
22 they ever filed this lawsuit what judge they wanted for  
23 their case. They filed in this District, which has really  
24 no connection with Colombia or the matters involved here,  
25 only to get Judge Weinstein because they thought he's tough

1 on tobacco companies. That's not fair. It's not the right  
2 way to proceed.

3 We ask you to do the right thing in the interests  
4 of justice. There is going to be no judicial savings by  
5 having Judge Weinstein involved in matters that he has had  
6 no prior involvement in, and we ask you to send it back to  
7 the Clerk's office and reassign this matter. Thank you.

8 THE COURT: I worked (ui) twenty years ago, when I  
9 was U.S. Attorney (ui). I haven't seen him (ui).

10 MR. HALLORAN: No problem, your Honor. Your  
11 Honor, on behalf of the Departments of the Republic of  
12 Colombia, we'd like to respond to the statements made today.  
13 There is ample evidence and there will be a demonstration at  
14 trial that Philip Morris was directly involved in smuggling  
15 activities. They have smuggled their tobacco through a  
16 massive conspiracy into the Republic of Colombia, to the  
17 detriment of our clients.

18 THE COURT: We can assume for the present purposes  
19 that the complaint is true. The issue is what it has to do  
20 with what Judge Weinstein has been handling, what they've  
21 described as the tobacco health cases.

22 MR. HALLORAN: Your Honor, there are several  
23 reasons why we designated our cases as being related to In  
24 Re: Tobacco Litigation, Eastern District of New York pending  
25 before Judge Weinstein. One of the reasons is Judge

1 Weinstein, on April 18th of this year, issued a  
2 consolidation order pursuant to which he consolidated a wide  
3 variety of tobacco-related litigation before him for  
4 purposes of settlement. We've read the New York Times  
5 today. We've all seen that those processes are ongoing.

6 THE COURT: I read it quickly. I didn't notice  
7 the article.

8 MR. HALLORAN: We were on notice of that order,  
9 your Honor, and given Judge Weinstein's consolidation order,  
10 we had thought it would have been inappropriate for us to  
11 circumvent and attempt to undermine that consolidation, that  
12 effort to broker a global settlement, had we decided to --

13 THE COURT: I assume -- tell me if I'm wrong, but  
14 I assume that what we're talking about is a global  
15 settlement in the tobacco health cases. Those are the  
16 tobacco cases that he has. Just because this involves  
17 tobacco does not make it appropriate --

18 MR. HALLORAN: It does, your Honor, and the  
19 principal reason for that is there are substantial  
20 overlapping legal questions that this Court will need to  
21 determine that have already been addressed and decided by  
22 Judge Weinstein. Let me give you a couple of examples.

23 In our complaint, we have relied extensively upon  
24 documentation available in a depository in Minnesota.  
25 Philip Morris has invoked the attorney/client privilege with

1 respect to that. Judge Weinstein has issued a comprehensive  
2 opinion essentially adopting Judge Gold's recommendations  
3 with respect to a rejection of that privilege. That very  
4 issue needs to be relitigated if this action were to be  
5 assigned to a different judge.

6 Our allegations are based to a large extent on  
7 documents that demonstrate in that depository that Philip  
8 Morris was doing direct business with known narcotics  
9 dealers. We have every expectation that Philip Morris will  
10 raise the issue of attorney/client privilege similar to the  
11 issue that was raised before Judge Weinstein, and there is  
12 just no reason for another magistrate judge and another  
13 district court judge to spend the untold judicial hours to  
14 resolve these kinds of discovery issues.

15 Another key issue, your Honor, is that the  
16 departments of the Republic of Colombia are going to be  
17 suing British American Tobacco and its related entities.  
18 Judge Weinstein has issued a comprehensive opinion, over 80  
19 pages long, analyzing the personal jurisdiction of British  
20 American Tobacco. We fully expect that British American  
21 Tobacco will fight personal jurisdiction and again, it  
22 doesn't make any sense at all for a new judge, completely  
23 unfamiliar with the facts and the circumstances of British  
24 American Tobacco, to be deciding these issues.

25 A substantial saving in judicial resources will

1 result if this action is returned to Judge Weinstein for  
2 purposes of resolving issues like the depository privilege  
3 question, the personal jurisdiction issue with respect to  
4 British American Tobacco, and Judge Weinstein has addressed  
5 multiple questions that Philip Morris has already indicated  
6 to us they're going to raise on a motion to dismiss. Judge  
7 Weinstein has defined the word property within the meaning  
8 of 1964(c) as including money, which is one of the forms of  
9 relief that we are seeking here.

10 THE COURT: Is that a (ui)?

11 MR. HALLORAN: We don't know, your Honor.

12 THE COURT: I always thought the question was  
13 whether property meant more than money but that nobody had  
14 ever (ui).

15 MR. HALLORAN: Your Honor, I hope and pray that we  
16 don't have to litigate that question, but the way things  
17 have gone so far, we expect to receive a wide variety of  
18 claims and defenses, many of which have already been  
19 addressed and resolved by Judge Weinstein. Simply put, your  
20 Honor, the modus operandi of Philip Morris in the  
21 racketeering cases that are before Judge Weinstein involve  
22 wire fraud, mail fraud, Travel Act violations very similar  
23 to the allegations --

24 THE COURT: Those are statutes. The question is,  
25 what is the underlying nucleus of fact that triggers them?

1 I don't know that just because you have the same statutes --  
2 that conduct that arises out of a different set of conduct  
3 and circumstances necessarily (ui). Listen, I have to stop  
4 for just a few minutes. It's one of the headaches of being  
5 Chief Judge.

6 MR. HALLORAN: It's an honor.

7 (Tape off, tape on)

8 MR. HALLORAN: I'm about finished, your Honor. In  
9 conclusion, we believe that a substantial saving of judicial  
10 resources would occur if this matter were to remain before  
11 Judge Weinstein, as he has decided issues that are clearly  
12 likely to arise in this case.

13 MR. NATHAN: Your Honor, may I have a few words of  
14 rebuttal?

15 THE COURT: The two issues are the personal  
16 jurisdiction over the party (ui) and an issue with respect  
17 to (ui). So that I understand this, the two issues that he  
18 moved on were with respect to an issue of personal  
19 jurisdiction and with respect to a party that's not named at  
20 the moment but is to be named and an issue of  
21 attorney/client privilege that's likely to arise in this  
22 case as well.

23 MR. HALLORAN: Those are the two principal legal  
24 questions, your Honor, and with respect to the depository,  
25 we're talking about 37,000 documents that were the subject



1 of a privilege claim. We have relied upon those documents  
2 in our case. We expect that that privilege issue will arise  
3 again. In addition, your Honor, in our papers we identified  
4 several RICO-related questions such as the definition of  
5 property, such as the definition of proximate cause, that  
6 are similar to the defenses that Philip Morris has already  
7 identified in their papers as likely to be the subject of a  
8 motion to dismiss.

9           Finally, your Honor, with respect to the modus  
10 operandi of Philip Morris, one of the theories relied upon  
11 in the RICO-related litigation against Philip Morris before  
12 Judge Weinstein is that they have relied upon surrogates,  
13 including lobbyists and front organizations to achieve their  
14 corporate goals and to carry through wire fraud and mail  
15 fraud schemes. We expect that similar issues will need to  
16 be resolved by Judge Weinstein or whoever decides our case,  
17 because a similar modus operandi, a similar theory is at the  
18 heart of our complaint.

19           MR. NATHAN: Your Honor, if I can just say a few  
20 words. You're quite right that with respect to the nature  
21 of the claims in the tobacco health litigation in this  
22 consolidated complaint that was filed just earlier this  
23 week, the so-called Simon II litigation, they describe the  
24 actions. There are smokers actions, there are union health  
25 fund actions and there are third-party-payer actions. All

1 of these are for medical expenses paid for smoking and  
2 health matters. That's the nature of the matter that is  
3 before Judge Weinstein.

4           You talk about efficiency. Let me show you how  
5 the inefficiency results from this related notion. This is  
6 the docket from this case and as a result of their having  
7 checked the box saying that this is related to the smoking  
8 and health cases, we now have in our case -- we have the  
9 450-page report of the U.S. Surgeon General on the health of  
10 tobacco. We have notices about the new addresses of  
11 attorneys for Liggett & Meyers (ph), which has nothing to do  
12 with this case, and a few other things. The Clerk's office  
13 has -- they're just doing what they have to do by rote, but  
14 they put all these documents into our file that have no  
15 business in our case, have nothing to do with it.

16           With respect to these alleged documents from the  
17 Minnesota depository, let me say first there is not a single  
18 document from the Minnesota depository that's referred to in  
19 the 80-page complaint -- they've actually filed three 80-  
20 page complaints.

21           THE COURT: Let me ask you a quick question. I  
22 don't mean to interrupt you. Are you complying with his --  
23 since he rejected your claim of privilege, are you complying  
24 with --

25           MR. NATHAN: You mean the company?

1 THE COURT: Yeah.

2 MR. NATHAN: I mean, I'm not involved in the case  
3 but sure. What Judge Weinstein ruled in that matter was the  
4 documents have been disclosed by Congress and he said for  
5 purposes of discovery, they're out there and I'm not going  
6 to uphold the privilege. When you get to the issues of  
7 trial, he said, I'm going to rule on this on a case-by-case  
8 basis for the admissibility of these documents as to each  
9 document and what the background of the privilege is. So I  
10 have no reason to believe that any of those documents are  
11 relevant to this case. They're about smoking and health  
12 matters. They're not about the foreign distribution of  
13 cigarettes.

14 Obviously, we're complying with Judge Weinstein's  
15 order with respect to the -- on the discovery in the smoking  
16 and health cases. I have every reason to believe there will  
17 be totally different documents and different issues with  
18 respect to privilege in this case. Your Honor has put your  
19 finger on it on British American Tobacco. They marked it  
20 related on May 19th. Here we are on September 8th and  
21 they're saying we're going to add a party and the judge  
22 ruled about that matter and so you should make it related.

23 Apart from the fact that they're not in the case  
24 now and they weren't in the case on May 19th when they  
25 marked it related, it's totally unfair even to British

1 American Tobacco, and I'm not their counsel, the notion that  
2 the judge ruled on their personal jurisdiction, that that  
3 means that every case, no matter what it relates to from  
4 British American Tobacco is going to go to the same judge.  
5 It raises the same issue and it's totally unfair.

6           With respect to the legal issues, he says money is  
7 property. The issue in that case was -- this is in National  
8 Asbestos -- are damages from personal injuries, medical  
9 expenses incurred from smoking -- are those recoverable  
10 under RICO, which only has property matters and doesn't have  
11 personal injuries in it. This has nothing to do with  
12 personal injuries. It's about taxes and import duties that  
13 his clients allegedly didn't receive from smuggling.

14           You can make anything generic and say it's a tort  
15 case, it's a RICO case, it's a mail fraud case. These are  
16 not the ways to say that a case is related. This will not  
17 have any efficiencies and in fact, as I've demonstrated, it  
18 would cause inefficiencies. It's a very simple matter, your  
19 Honor. They have no right to Judge Weinstein. There is no  
20 prejudice to them if they get put in the wheel and they have  
21 a just chosen at random.

22           We have a right to have the rules followed and not  
23 to have for example Mr. Malone's prospective client -- I  
24 don't know whether it's an existing client but a prospective  
25 plaintiff here, the European union, weighing in on a case

1 they haven't even filed saying, we'd like to be in the  
2 Eastern District too and we'd like to have Judge Weinstein.

3 This is exactly the reason for adopting this rule  
4 and I find it just offensive, and I would hope that the  
5 Court would find it offensive, the manipulation of your  
6 rules to get cases filed that don't even belong in the  
7 Eastern District here just because they think that Judge  
8 Weinstein has an iron hand against the tobacco companies.  
9 So we urge you to send it back to the Clerk's office and  
10 reassign this matter and proceed with a judge chosen at  
11 random.

12 THE COURT: I don't think that Judge Weinstein has  
13 an iron hand over the tobacco companies. He's a wonderful  
14 judge.

15 MR. NATHAN: I'm not saying -- he was a great  
16 evidence professor of mine.

17 THE COURT: When I was U.S. Attorney, he was not  
18 known as a pro-government judge but it never bothered me  
19 when we drew his name out of the wheel because he was  
20 terrific.

21 MR. NATHAN: Right.

22 THE COURT: But that's not the issue and I don't  
23 think these cases are related. They do not arise out of a  
24 common nucleus of facts, which I think is what's critical.  
25 They simply do not deal with the same subject matter as the

1 tobacco health cases that Judge Weinstein is dealing with.  
2 And it just can't be because this case has something to do  
3 with tobacco that it gets related. The fact that they don't  
4 arise out of a common nucleus of facts also goes to the  
5 issue of whether there would be any substantial saving of  
6 judicial time and effort.

7 As far as the issue that he ruled on personal  
8 jurisdiction over that which is not even a party yet for  
9 this proceeding seems to me not to my mind (ui) assigning  
10 every back case that came along, even if it had nothing to  
11 do with any tobacco-related issue -- suppose it was a breach  
12 of contract or some other tort that occurred. I just don't  
13 see why there's a basis for relating them, and the same is  
14 true with respect to the discovery. There's just not a  
15 strong enough -- these are not strong enough reasons to  
16 override the policies underlying the random assignment rule.

17 If this case involved tobacco and health-related  
18 issues, I would rule differently, but they're just not  
19 related in a way that I think is necessary to justify  
20 relating the cases. So I'm going to direct the Clerk to  
21 assign it by random selection. We have 15 judges sitting in  
22 Brooklyn and you still have a one-in-fifteen shot. These  
23 three cases, by the way, that are consolidated (ui). Right  
24 now are they --

25 MR. HALLORAN: They have not been consolidated.

1 THE COURT: Is there any reason why they shouldn't  
2 be consolidated?

3 MR. HALLORAN: We plan to, your Honor.

4 THE COURT: Is there any reason to reassign it to  
5 a different magistrate?

6 MR. NATHAN: I would think it would be -- is that  
7 done randomly, too? Is it related to the judge who has it?

8 THE COURT: No. The normal practice here is when  
9 a case is assigned, they draw the judge's name and the  
10 magistrate's.

11 MR. NATHAN: I would like them to draw both.

12 MR. STEWART: Your Honor, I also have the order  
13 granting admission to Mr. Nathan.

14 THE COURT: You'll pay the \$25.

15 MR. NATHAN: We did.

16 MR. STEWART: No, we will.

17 THE COURT: You need a certificate. Send it in.

18 MR. NATHAN: Thanks.

19 THE CLERK: The certificate needs to be filed and  
20 the fee paid within ten days.

21 THE COURT: If you wait, we'll do it right now.

22 MR. NATHAN: Can the Clerk do it?

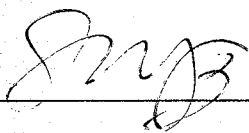
23 THE COURT: Just wait.

24 MR. NATHAN: Thank you.

25 \* \* \* \* \*

\* \* \* \* \*

I certify that the foregoing is a correct transcript  
from the electronic sound recording of the proceedings in  
the above-entitled matter.



Elizabeth Barron



Date